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3749PATENT  
512100-2020

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Becker et al  
 U.S. Serial No. : 09/937,457  
 International Application No. : PCT/EP00/02041  
 International Filing Date : September 24, 2001  
 For : Drying Device and Process for its Production  
 Group Art Unit : N/A

745 Fifth Avenue  
 New York, New York 10151

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William F. Lawrence, Registration No. 28,029  
Name of Applicant, Assignee or Registered Representative  
Signature

March 26, 2002  
Date of Signature

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COMMUNICATION

Assistant Commissioner for Patents  
 Box PCT  
 Washington, D.C. 20231

Sir:

Enclosed for the Examiner's convenience is a copy of

BEST AVAILABLE COPY

PATENT  
512100-2020

the International Preliminary Examination Report in  
PCT/EP00/02041.

Respectfully submitted,

FROMMER LAWRENCE & HAUG LLP  
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By



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**PCT**  
**NOTIFICATION OF TRANSMITTAL**  
**OF COPIES OF TRANSLATION**  
**OF THE INTERNATIONAL PRELIMINARY**  
**EXAMINATION REPORT**  
(PCT Rule 72.2)

From the INTERNATIONAL BUREAU

To:

SCHMIDT, Werner  
LTS Lohmann Therapie-Systeme AG  
Postfach 1525  
D-56605 Andernach  
ALLEMAGNE

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05 OCT 2001  
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Date of mailing (day/month/year)

24 September 2001 (24.09.01)

Applicant's or agent's file reference

1999/110

199 13 761

**IMPORTANT NOTIFICATION**

International application No.

PCT/EP00/02041

Trotzdem mit dem PCT

International filing date (day/month/year)

09 March 2000 (09.03.00)

Applicant

LTS LOHMANN THERAPIE-SYSTEME AG et al

**1. Transmittal of the translation to the applicant.**

The International Bureau transmits herewith a copy of the English translation made by the International Bureau of the international preliminary examination report established by the International Preliminary Examining Authority.

**2. Transmittal of the copy of the translation to the elected Offices.**

The International Bureau notifies the applicant that copies of that translation have been transmitted to the following elected Offices requiring such translation:

AU,CA,CN,JP,KR,NZ,PL,US

The following elected Offices, having waived the requirement for such a transmittal at this time, will receive copies of that translation from the International Bureau only upon their request:

EP,BR,CZ,HU,IL,IN,MX,RU,TR,ZA

**3. Reminder regarding translation into (one of) the official language(s) of the elected Office(s).**

The applicant is reminded that, where a translation of the international application must be furnished to an elected Office, that translation must contain a translation of any annexes to the international preliminary examination report.

**It is the applicant's responsibility to prepare and furnish such translation directly to each elected Office concerned (Rule 74.1). See Volume II of the PCT Applicant's Guide for further details.**

The International Bureau of WIPO  
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1211 Geneva 20, Switzerland

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Authorized officer

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Translation

PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference 1999/110	FOR FURTHER ACTION		SeeNotificationofTransmittalofInternational Preliminary Examination Report (Form PCT/IPEA/416)
International application No. PCT/EP00/02041	International filing date (day/month/year) 09 March 2000 (09.03.00)	Priority date (day/month/year) 26 March 1999 (26.03.99)	
International Patent Classification (IPC) or national classification and IPC B01D 53/26			
Applicant LTS LOHMANN THERAPIE-SYSTEME AG			

1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.

2. This REPORT consists of a total of 8 sheets, including this cover sheet.

This report is also accompanied by ANNEXES, i.e., sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).

These annexes consist of a total of 4 sheets.

3. This report contains indications relating to the following items:

- I  Basis of the report
- II  Priority
- III  Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- IV  Lack of unity of invention
- V  Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- VI  Certain documents cited
- VII  Certain defects in the international application
- VIII  Certain observations on the international application

Date of submission of the demand 06 October 2000 (06.10.00)	Date of completion of this report 03 July 2001 (03.07.2001)
Name and mailing address of the IPEA/EP	Authorized officer
Facsimile No.	Telephone No.

## INTERNATIONAL PRELIMINARY EXAMINATION REPORT

International application No.

PCT/EP00/02041

## I. Basis of the report

## 1. With regard to the elements of the international application:\*

the international application as originally filed

the description:

pages 1-16, as originally filed

pages \_\_\_\_\_, filed with the demand

pages 2a, filed with the letter of 07 March 2001 (07.03.2001)

the claims:

pages \_\_\_\_\_, as originally filed

pages \_\_\_\_\_, as amended (together with any statement under Article 19), filed with the demand

pages \_\_\_\_\_, filed with the letter of 07 March 2001 (07.03.2001)

the drawings:

pages 1/1, as originally filed

pages \_\_\_\_\_, filed with the demand

pages \_\_\_\_\_, filed with the letter of \_\_\_\_\_

the sequence listing part of the description:

pages \_\_\_\_\_, as originally filed

pages \_\_\_\_\_, filed with the demand

pages \_\_\_\_\_, filed with the letter of \_\_\_\_\_

## 2. With regard to the language, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language \_\_\_\_\_ which is:

the language of a translation furnished for the purposes of international search (under Rule 23.1(b)).

the language of publication of the international application (under Rule 48.3(b)).

the language of the translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

## 3. With regard to any nucleotide and/or amino acid sequence disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

contained in the international application in written form.

filed together with the international application in computer readable form.

furnished subsequently to this Authority in written form.

furnished subsequently to this Authority in computer readable form.

The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.

The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4.  The amendments have resulted in the cancellation of:

the description, pages \_\_\_\_\_

the claims, Nos. \_\_\_\_\_

the drawings, sheets/fig \_\_\_\_\_

5.  This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).\*\*

\* Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rule 70.16 and 70.17).

\*\* Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.

**INTERNATIONAL PRELIMINARY EXAMINATION REPORT**

International application No.

PCT/EP00/02041

**VI. Certain documents cited****1. Certain published documents (Rule 70.10)**

Application No. Patent No.	Publication date (day/month/year)	Filing date (day/month/year)	Priority date (valid claim) (day/month/year)
WO 00/06663	10 February 2000 (10.02.2000)	30 December 1999 (30.12.1999)	31 July 1998 (31.07.1998)

**2. Non-written disclosures (Rule 70.9)**

Kind of non-written disclosure	Date of non-written disclosure (day/month/year)	Date of written disclosure referring to non-written disclosure (day/month/year)

**INTERNATIONAL PRELIMINARY EXAMINATION REPORT**International application No.  
PCT/EP 00/02041**V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement****1. Statement**

Novelty (N)	Claims	13-17, 22, 23	YES
	Claims	1-12, 18-21	NO
Inventive step (IS)	Claims		YES
	Claims	1-23	NO
Industrial applicability (IA)	Claims	1-23	YES
	Claims		NO

**2. Citations and explanations**

SEE SUPPLEMENTAL SHEET

**Supplemental Box**  
(To be used when the space in any of the preceding boxes is not sufficient)

Continuation of: BOXES I.5, V, VI and VIII

**A. BOX I.5**

The applicant amended independent method Claim 23 to read that a "drying device fitted with a pressure-sensitive adhesive" is used and the drying device "is permanently joined to a surface after it is applied once to said surface with a particular pressure". However, the originally filed documents disclose the latter method step only in connection with the feature of the pressure-sensitive, drying-agent-containing matrix (see page 5, line 31 - page 6, line 2). Since the feature of the "drying device fitted with a pressure-sensitive adhesive" also includes embodiments in which the drying-agent-containing matrix itself is not pressure-sensitive, the subject matter of Claim 23 has been extended beyond the disclosure in the application as originally filed [PCT Article 34(2)(b)]. The examination of the independent method claim was based on the original Claim 25.

**B Box VIII**Clarity

The claims are unclear for the following reasons (Article 84):

B.1 The method according to independent Claim 11 concerns the manufacture of a drying device without a pressure-sensitive layer. The use according to independent Claim 18 concerns drying devices without a polymer material. However, independent product Claim 1 contains the features of the

**Supplemental Box**  
(To be used when the space in any of the preceding boxes is not sufficient)

Continuation of: BOXES I.5, V, VI and VIII

pressure-sensitive layer and of the polymer material. Claims 11-22 therefore appear to lack an essential feature (see "essential feature" in the Guidelines, Chapter II-4.3). For the examination of novelty and inventive step, the present claims were interpreted as if Claims 11-22 contained these missing essential features.

B.2 Claim 7 contradicts Claim 1, since the latter contains the feature of a pressure-sensitive layer. Consequently, the drying-agent-containing layer cannot be pressure-sensitive. Moreover, Claim 7 does not comply with PCT Rule 10.2, since it mentions a drying-agent-containing "layer", while Claim 6 mentions a drying-agent-containing "matrix".

**C. Box V**

This report makes reference to the following documents:

D1: WO-A-98/17711

D2: DE-A-195 13 627

D3: DE-A-196 46 048 (mentioned in the application).

**C.1 Novelty**

i) Document D3 describes a drying device comprising  
a) a flat matrix (see column 4, lines 29-32)  
containing a polymer material and a  
regeneratable drying agent (column 3, lines  
13-18) contained therein;

**Supplemental Box**  
(To be used when the space in any of the preceding boxes is not sufficient)

Continuation of: BOXES I.5, V, VI and VIII

b) a pressure-sensitive layer (column 3, lines 7-12).

Consequently, the subject matter of the present Claim 1 is not novel over the prior art (PCT Article 33(2)).

ii) The features of the following claims are also known from D3 (the references between parentheses are to D3) :

- Claims 2-5 (see Claim 3);
- Claim 6 (D3 concerns packaging laminates, which are implicitly elastic);
- Claim 7 (see column 3, lines 7-12, and the above objection for lack of clarity);
- Claim 8 (column 3, line 19);
- Claim 9 (column 3, lines 19-21);
- Claim 10 (column 3, line 25).

The subject matter of Claims 2-10 is therefore anticipated by D3 (PCT Article 33(2)).

iii) The method as per Claim 11 is known from document D3 (see Claims 7 and 8 of D3) and is therefore not novel over the prior art (PCT Article 33(2)). The subject matter of Claim 12 can also be found in D3 (see Claim 8 of D3) (PCT Article 33(2)).

iv) The use as per Claim 18 is anticipated by document D3 (see Claim 7). Since the moisture-sensitive object packaged therein is a transdermal

## Supplemental Box

(To be used when the space in any of the preceding boxes is not sufficient)

Continuation of: BOXES I.5, V, VI and VIII

therapeutical system, the subject matter of Claims 19-21 is not novel (PCT Article 33(2)).

C.2 Inventive step

- i) Since the activation of the claimed device involves the drying of the device, the use of infrared radiation, additional circulating air or reduced external pressure during the production of the claimed drying devices does not appear to involve an inventive step. Moreover, document D1 indicates that electromagnetic radiation of other wavelengths may also be used, besides microwaves, for activating such drying devices (see page 5, lines 3-15). The subject matter of Claims 13-17 therefore does not comply with PCT Article 33(3).
- ii) It is generally known that silica gel (see D3: column 3, line 19) can be used as an adsorbent not only for water but also for other polar substances. It can be used, for example, as adsorbent for polar organic solvents (e.g. alcohols). Consequently, the use of a drying device of the type disclosed in D3 for removing organic solvent molecules is obvious to a person skilled in the art. The subject matter of Claim 22 therefore does not comply with PCT Article 33(3).
- iii) As explained above, the original Claim 25 was examined instead of Claim 23. Its subject matter differs from the commercially available product cited in D3 as prior art (column 2, lines 3-7) in

**Supplemental Box**  
(To be used when the space in any of the preceding boxes is not sufficient)

Continuation of: BOXES I.5, V, VI and VIII

that moisture is absorbed during at least one hour. However, this is obvious to a person skilled in the art and cannot substantiate an inventive step (PCT Article 33(3)).

**C.3 Industrial applicability**

The possible industrial uses are clear from the description (PCT Article 33(1) and (3)).

**D Box VI**

Reference is made under PCT Rule 70.10 to the following document:

WO-A-00/06663.

That document describes a device having the same features as Claims 1-7, 9 and 10 of the present application.

**FIRST CLASS**



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